

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1180 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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DILIP KANUBHAI PALANIYA THROUGH KANUBHAI.N.PALANIYA

Versus

STATE OF GUJARAT

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Appearance:

MR YS LAKHANI for Petitioner

Mr. ND Gohil, APP for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/04/98

ORAL JUDGEMENT

Heard learned Advocate Mr. Yogesh Lakhani appearing for the petitioner. Rule. Learned APP Mr. Gohil waives service of rule on behalf of the State.

The petitioner who claims to be a juvenile has prayed to be enlarged on bail in respect to offence registered at Wadhwan Police Station Crime Register No. I-9/98. That initially a FIR dated 20.1.1998 with

accusation in respect to offences made punishable under Sections 307, 323, 325, 201, 506(2) and 114 of the IPC and 135(1) of the Bombay Police Act was registered. Subsequently, victim injured - Girirajsinh Zala expired and thereby an offence under Section 302 was added. That petitioner being juvenile, accused was produced before Juvenile Court, Surendranagar and on behalf of the petitioner, an application was moved to release the petitioner on bail. That vide order dated 9th March, 1998, the President of Juvenile Court, Surendranagar, rejected the said application, against which further application being Criminal Misc. Application No. 13 of 1998 was moved in the court of learned Sessions Judge, Surendranagar. That vide order dated 20th March, 1998, said application was also rejected. Hence, the petitioner has filed the present application. It may be noted that the factum of petitioner being a juvenile accused is not in dispute. That learned Sessions Judge, Surendranagar has decided Appeal No. 6 of 1998 and has held that present petitioner the accused of Crime Register No. 9 of 1998 is a juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986. The said court has held that the birth date of present petitioner according to birth certificate being 7.3.1982. Thereby on the date of the incident i.e. 20th January, 1998, he was aged about 15 years and 10 months and as such he should be sent to the custody of Juvenile court.

Shri Yogesh Lakhani, learned Advocate appearing for the petitioner has referred to and relied on provision of Section-18 of the Juvenile Justice Act, 1986 and has contended that said provision has given overriding effect to the provisions of Criminal Procedure Code, 1973 and has made it obligatory on the part of Juvenile Court to release the accused on bail with or without surety subject to certain exceptions. That in the instance case, the exception to the effect that if the petitioner is released on bail, he is likely to bring him into association with any known criminal or expose him to moral danger or ends of justice would be defeated has no application. That the father of the present petitioner as natural guardian is ready and willing to furnish surety and to give undertaking that he shall produce the petitioner before the juvenile court as and when called.

Having regard to the above stated provisions of law and the facts and circumstances apparent from the material produced on record, in my opinion, the petitioner should be released on bail on appropriate conditions. Learned APP Mr. Gohil has left the matter to the discretion of the court.

In view of the above stated discussion, it is ordered that the present petitioner - Dilip Kanubhai Palaniya be released on bail in respect to offence registered vide Crime Register No. I-9/98 at Wadhwan Police Station on furnishing a surety for Rs. 10,000/- subject to following conditions:

- (a) not to take undue advantage of his liberty or misuse his liberty;
- (b) not to act in a manner injurious to the interest of the prosecution;
- (c) maintain law and order;
- (d) mark his presence before Wadhwan Police Station on every 1st and 15th day of each month during the currency of this order, any time between 9.00 a.m. and 2.00 p.m.;
- (e) not leave the local limits of Surendranagar City for a period beyond three days without the prior permission of the Juvenile Court at Surendranagar;
- (f) furnish the address of his residence at the time of furnishing the surety and shall not change his residence without prior permission of this Court;
- (g) The surety shall file an undertaking before the Juvenile Court, Surendranagar that petitioner shall be produced before the court as and when required or on completion of his 16th year and the President, Juvenile Court shall pass necessary order in accordance with law.

If breach of any of the above conditions is committed, the Sessions Court at Surendranagar will be free to issue warrant or take appropriate action in the matter.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

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